

Honorable Judge John C. Coughenour

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

ABDIWALI MUSSE,)	
)	
Plaintiffs,)	No. 2:18-cv-01736-JCC
)	
vs.)	
)	KING COUNTY DEFENDANTS'
WILLIAM HAYES, Director of King County)	BRIEF RE: PLAINTIFF'S REQUEST
Department of Adult and Juvenile Detention,)	TO CONTINUE SUMMARY
in his individual and official capacity, J. DOES)	JUDGMENT HEARING
ONE THROUGH FIVE, in their individual)	
and official capacity, and KING COUNTY, a)	
county of the State of Washington)	
)	
Defendants.)	

I. INTRODUCTION

Defendants William Hayes and King County (collectively "King County Defendants") are responding to a minute order from the Honorable John C. Coughenour, that requested briefing regarding the plaintiff's request to continue the summary judgment motion from February 5, 2021 to February 19, 2021. For the reasons outline below, the King County Defendants respectfully request the Court deny plaintiff's request.

II. STATEMENT OF FACTS

Plaintiff deposed Glenn Evans, King County Information Technology IT Enterprise Manager II, on August 10, 2020. Mr. Evans was designated by the defense to testify on behalf of King County regarding the jail computer system that was in service

KING COUNTY DEFENDANTS' BRIEF RE:
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1 between October 31 – November 1, 2015. Subsequent discovery led to another deposition
 2 on November 5, 2020. However, plaintiff's counsel adjourned the deposition until the
 3 remaining electronic discovery was provided. Evans Dep Vol. II 115:1-7.¹ On November
 4 19, 2020, at 4:39 pm, plaintiff's counsel sent a deposition notice via email noting Mr.
 5 Evans' deposition for the next day. Declaration of Jerry Taylor at ¶2. Defense counsel,
 6 who was out of the office, forwarded the notice to Mr. Evans on November 20, 2020, at
 7 9:19 am. *Id.* at ¶3. Due to technical issues the November 20th deposition was unable to
 8 proceed and new date of November 30, 2020, was agreed upon and plaintiff provided a
 9 deposition notice for that date, however, the deposition did not proceed because Mr.
 Evans was not available due the tragic death of his brother. *Id.* at ¶4-5.

10 On January 6, 2021, the parties agreed to a January 11, 2021 date for Mr. Evans'
 11 deposition. *Id.* at ¶6. On January 7, 2021, defense counsel informed plaintiff of a conflict
 12 with Mr. Evans' work schedule and the parties agreed to January 13, 2021. *Id.* at ¶7.
 13 Plaintiff's counsel did not provide notice for January 13, 2021, deposition. *Id.* at ¶8. On
 14 January 13, 2021, following a break towards the end of the deposition, plaintiff's counsel
 15 presented Mr. Evans with the November 19th deposition notice (Ex. 211) and asked Mr.
 16 Evans if he had seen it before. Evans Dep. Vol. IV 205:19-206:17, Dep. Ex. 211. Mr. Evans
 17 was unable to state definitively if he had seen this particular notice. Evans Dep. 206:16-17,
 18 207:5-14. Plaintiff's counsel subsequently decided to adjourn the deposition without
 19 asking Mr. Evans any further questions to allow Mr. Evans to review a deposition notice
 20 from November. Evans Dep. Vol. IV 218:20-21. Defense counsel stated his position
 21 regarding the adjournment of the deposition and re-noting the summary judgment
 motion. Evans Dep 211:6-16, 217:17-218:8 Mr. Evans' deposition was subsequently
 22 concluded on January 22, 2021.

23 ¹ Glenn Evans Deposition Excerpts and Exhibit are attached to the Declaration of Jerry Taylor.

III. AUTHORITY

Federal Rule of Civil Procedure 56 (d) authorizes the court to defer ruling on a summary judgment motion and allow the non-moving party to conduct additional discovery necessary to oppose the motion. A party seeking a continuance of the summary judgment motion must “make clear what information is sought and how it would preclude summary judgment.” *Garrett v. City and County of San Francisco*, 818 F.2d 1515, 1518 (9th Cir. 1998). Here, plaintiff contends that summary judgment needs to be continued so that he can obtain a copy of Glenn Evans’ deposition transcript from the January 22nd. This deposition, which was an hour or less, focused around paragraphs 4, 5, and 8 of Ex. 211 and offers no material facts that would preclude summary judgment. Mr. Evans has been deposed a total of 5 times in this case related to the jail computer system. However, whether the jail mainframe was completely down or in inquiry mode would not have changed the housing location of plaintiff and Mr. Anderson on November 1, 2015. It is undisputed that Mr. Anderson was not designated as a DHRC inmate on November 1, 2015 and there was no basis to isolate or separate him from other inmates at that time. Additionally, plaintiff has all but the last deposition transcript which he can obtain this week. Taylor Dec. at ¶9, 10. In fact, plaintiff appeared willing to proceed with the summary judgment motion if King County paid for a rush transcript. *Id.* at ¶10.

Further, any argument that King County caused delay related to Glenn Evans’ deposition is unfounded. Federal Rule of Civil Procedure 30 (b)(6) requires a party seeking to depose an agent of a governmental agency in its notice to “describe with reasonable particularity the matters for examination.” Plaintiff did not provide King County with any such notice prior to Mr. Evans’ deposition on January 13, 2021. Taylor Dec. at ¶8. Instead, plaintiff waited until near the end of the deposition to present Mr. Evans with a deposition notice almost two months old, used the witness’ hesitance related to the notice to delay the conclusion of the deposition and is seeking a continuance

1 of the summary judgment motion even though he can obtain the transcript this week and
2 there is no material facts from that deposition that would preclude summary judgment.
3 King County defendants respectfully request the Court deny plaintiff's request.

4 DATED this 26th day of January, 2021.

6 DANIEL T. SATTERBERG
7 King County Prosecuting Attorney

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KING COUNTY DEFENDANTS' BRIEF RE:
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SUMMARY JUDGMENT HEARING - 4

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CERTIFICATE OF FILING AND E-SERVICE

I hereby certify that on January 26, 2021, I electronically filed the foregoing document with the Clerk of the Court using the electronic filing system and by agreement of the parties a copy was served electronically on the following:

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I declare under penalty of perjury under the laws of the United States and the State of Washington that the foregoing is true and correct.

DATED this 26th day of January, 2021.



ANGELA LINDSEY
Legal Secretary
King County Prosecuting Attorney's Office